



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
	)	
XXXXXXXXXXXX, XXXXX	)	ISCR Case No. 08-00534
SSN: XXX-XX-XXXX	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

August 28, 2008

**Decision**

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

**Statement of the Case**

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP), on May 26, 2006. On April 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 8, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 20, 2008, and I received the case assignment on May 28, 2008. DOHA issued a notice of hearing on June 5, 2008, scheduling the hearing for June 26, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 10, identified by List of Government Exhibits (Ex. I), which were received without objection. Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and she testified on her own behalf.

I held the record open until July 11, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE E through L without objection, which were forwarded to me by Department Counsel by Memorandum, dated July 11, 2008 (Ex. II). DOHA received the transcript of the hearing (Tr.) on July 3, 2008.

### **Procedural Issues**

The Government submitted a Stipulation dated May 20, 2008, stating that Applicant has paid or otherwise satisfied debts alleged in SOR ¶¶ 1.a., 1.d., 1.g., and 1.i. – 1.l. The stipulation further stated that Applicant has made partial payments and/or entered into payment arrangements with creditors listed in ¶¶ 1.c., 1.e., 1.h. and that Applicant has made payments on the debt in 1.f. since October 2006, and as of January 8, 2008, had a balance of \$16,850.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.c., 1.e., 1.f., and 1.h. She denied ¶¶ 1.a., 1.b., 1.d., 1.g., 1.i., 1.j., 1.k., 1.l., 1.m., and 1.n. Her admissions and Stipulations *supra* are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 32-year-old old information assurance analyst, who has been employed by her defense contractor employer since May 2006. GE 1, Tr. 20. She seeks to renew her security clearance, which is a requirement to maintain her employment. Tr. 19, 22.

Applicant graduated from high school in June 1994. GE 1, Tr. 17. She served in the U.S. Army from May 1996 to July 2005, and was honorably discharged as a Sergeant (pay grade E-5). Her Military Occupational Specialty while in the Army was 74B – Information Systems Operator – Analyst. GE 1, Tr. 20-22. Applicant was granted a secret security clearance in approximately May 1996 while in the Army, and has successfully held a clearance since then without incident. Tr. 21-22.

Applicant has never been married, and is a single mother of a seven-year-old son. She receives \$348 child support per month from her son's father. Tr. 16-17, 41-42. Applicant is attending college on a part-time basis and estimates she has earned 54 to 56 credit hours towards a bachelor of science degree in information systems. Tr. 17-18.

Applicant's background investigation addressed her financial situation and included the review of her May 2006 e-QIP, her November 2007 Personal Financial Statement, December 2005 and March 2006 judgments, and her July 2006, November 2007 and May 2008 credit reports. GE 1, GE 3 - 8.

Applicant's SOR identified 14 separate line items. As the Government's Stipulation notes *supra*, debts alleged in SOR ¶¶ 1.a., 1.d., 1.g., 1.i. 1.l., have been paid or otherwise satisfied. The Stipulation also reflects that Applicant has made partial payments and/or entered into payment arrangements with creditors alleged in SOR ¶¶ 1.c., 1.e., and 1.h., and has made payments totaling \$9,640 since October 2006 to the creditor alleged in SOR ¶ 1.f. with a balance of \$16,850 as of January 2008. SOR ¶¶ 1.b., 1.m., and 1.n. are the same debt. Applicant remains current on all debts in which she made payment arrangements with creditors. Tr. 34-40.

Applicant paid or otherwise resolved 10 of the 14 debts alleged, and three of the four remaining debts alleged were the same debt as noted *supra*. Before the hearing commenced, only one debt had not been resolved, the collection account debt alleged in SOR ¶ 1.b. With regard to that debt Applicant appeared at her hearing with documentation that that account had been settled and closed as reflected by creditor letter dated June 23, 2008. AE A. Tr. 23-25.

Applicant attributes her financial difficulties to a family medical emergency that arose in 2005 and continued into 2006. Her oldest sister's daughter developed a growth on her brain, which required surgery. Applicant's sister had to take leave from her job to care for her daughter. Applicant provided financial and emotional support to her sister for 1 ½ years and as a result, she was unable to remain current on her own bills. Tr. 13, 25-26, 44, 31-32.

Applicant has established a budget with the assistance of a friend, who is a financial consultant. Her annual income is \$83,172, which includes her salary, child support, and disability pay from the Veteran's Administration. Her net monthly remainder is \$2,400. AE L.

Applicant provided a letter from her older sister, who stated ". . . I would not have made it without the help of my family including my sister [Applicant]. She contributed financially and emotionally toward my family. I didn't know it was a strain on her because she never said anything to me at that time." AE H. Applicant also submitted a letter from the financial consultant, who outlined a strategy that has allowed Applicant to return to financial stability. AE I. Her 2007 and 2008 work performance evaluations reflect above average performance. AE J, AE K.

## Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The Administrative Judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F, Financial Considerations

Under Guideline F (Financial Considerations),<sup>1</sup> the Government's concern is that an Applicant's:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant's financial considerations concerns were established by her admissions and the Government's evidence. Applicant's financial difficulties stem from the financial assistance she provided to her older sister during her daughter illness during 2005 and 2006. Applicant's sister did not have the financial means to work and provide the necessary care for her daughter. Applicant shored up her sister's budget shortfalls, but at a considerable expense to herself. As a result, she was unable to pay her own bills.

Of the nine Financial Considerations Disqualifying Conditions listed under Guideline ¶ 19, two are applicable: ¶ 19(a): "inability or unwillingness to satisfy debts;" and ¶ 19(c): "a history of not meeting financial obligations."

When the hearing convened, Applicant had paid or otherwise resolved all but one of 14 debts alleged in the SOR. When she appeared at her hearing, she produced documentation that she had resolved that one remaining debt. She remains current on accounts for which she is making payments. She has sought financial counseling and has a net monthly remainder of \$2,240. Her financial difficulties stem from her choice to provide financial assistance to her sister during a difficult time.

Considering the record evidence as a whole,<sup>2</sup> I conclude three of the six Financial Considerations Mitigating Conditions under Guideline ¶ 20 are applicable or partially applicable: ¶ 20(b) "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;" ¶ 20 (c) "the person has received or is

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<sup>1</sup> Guideline ¶ 18.

<sup>2</sup> See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;" and ¶ 20(d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met her ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"<sup>3</sup> and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude she is eligible for access to classified information.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a. – 1.n.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

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ROBERT J. TUIDER  
Administrative Judge

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<sup>3</sup> See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).